

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STAFFORD BROUMAND, M.D.

Petitioner,

-against-

JEREMY JOSEPH; PATRICIA HAWKINS;
SEAN GABRIEL; LEIGH SLAUGHTER; and
JENNIFER A. GREENHALL,

Respondents.

Case No. 20-cv-9137 (JSR)

**RESPONDENT JEREMY JOSEPH'S SUPPLEMENTAL REPLY BRIEF IN SUPPORT OF
OPPOSITION AND OBJECTIONS TO PETITION TO COMPEL COMPLIANCE WITH
ARBITRATOR'S SUBPOENA**

Respondent Jeremy Joseph ("Joseph"), appearing specially and without submitting to the Court's jurisdiction in this matter, respectfully submits his Supplemental Reply Brief pursuant to the Court's Order dated January 7, 2021, Dkt. No. 33 ("Order"), in connection with his Opposition to Petitioner Stafford Broumand, M.D.'s ("Broumand's") Petition to Compel Compliance with Arbitrator's Subpoena (the "Petition").

Joseph submits the following response to Broumand's Supplemental Brief, Dkt. No. 37. First, Broumand now admits that he cannot compel Joseph to testify before the arbitrator in New York. *Id.* at § III. As a result, Broumand's Petition attempts to enforce an invalid subpoena seeking to compel relief that Broumand recognizes he cannot obtain. See Dkt. No. 1-1 at pp 1-2 ["you are hereby ordered to appear at an evidentiary hearing to be held at the office listed below" and listing Petitioner's counsel's New York office as the place for appearance at an unspecified date and time]. Broumand now appears to seek to rewrite the subpoena by claiming that it requires testimony via

videoconference, which it does not. And, as demonstrated in Joseph's supplemental brief and below, even if it did, Broumand cannot compel Joseph's testimony via video conference.

Second, and with respect to the issue of video testimony, Broumand fails to rebut Joseph's showing that a non-party to an arbitration simply cannot be compelled to provide video testimony under Section 7 of the Federal Arbitration Act. Instead, Broumand cites inapposite authority regarding depositions in federal cases, which does not nothing to overcome the Eleventh Circuit's clear holding in *Managed Care* that a "court may not enforce an arbitral summons for a witness to appear via video conference." 939 F.3d at 1160.

Overall, and based on the briefing, it is clear that Broumand is seeking to (a) enforce an arbitral subpoena that, on its face, transgresses the geographical limit set forth in Rule 45(c) and (b) rewrite the subpoena, albeit unsuccessfully, to try to compel video testimony that the Court simply cannot order Joseph to provide. Accordingly, Joseph respectfully requests that the Court deny the Petition in its entirety.

Dated: January 22, 2021

Respectfully Submitted,

/s/Steven A. Heath
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CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is Heath Steinbeck, LLP, 10675-B Santa Monica Blvd, Los Angeles, CA 90025.

On January 22, 2021, I served the **RESPONDENT JEREMY JOSEPH'S SUPPLEMENTAL REPLY BRIEF IN SUPPORT OF OPPOSITION AND OBJECTIONS TO PETITION TO COMPEL COMPLIANCE WITH ARBITRATOR'S SUBPOENA** on the interested parties in this action:

☒ **(BY E-MAIL OR ELECTRONIC TRANSMISSION)**

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I declare under penalty of perjury that the foregoing is true and correct. Executed on January 22, 2021, here, at Los Angeles, California.

/s/ Steven A. Heath